

ENTERED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

DION O. DANIELS,

Petitioner,

v.

STATE OF WEST VIRGINIA,

Respondent.

CIVIL ACTION NO. 5:04-0762

TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

APR 26 2006

MEMORANDUM OPINION AND JUDGMENT ORDER

By Standing Order entered on July 21, 2004, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on March 27, 2006, and proposed that this court (1) confirm and accept the Magistrate Judge's findings contained within his Proposed Findings and Recommendation, (2) dismiss petitioner's "Emergency Writ for Habeas Corpus pursuant to 2254" (Doc. No. 2) for failure to prosecute, and (3) direct the Clerk to remove this matter from the court's docket. (See Doc. No. 6 at 4-5.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file

objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). No objections were filed in this case.

Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court (1) CONFIRMS and ACCEPTS the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation, (2) DISMISSES petitioner's "Emergency Writ for Habeas Corpus pursuant to 2254" (Doc. No. 2) for failure to prosecute; and (3) DIRECTS the Clerk to remove this matter from the active docket of the court and to forward a certified copy of this Memorandum Opinion and Judgment Order to all counsel of record and the plaintiff, pro se.

IT IS SO ORDERED this 26th day of April, 2006.

ENTER: April 26, 2006


THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE